

## ABOUT STEWART TITLE LIMITED

**Stewart Title Limited is wholly owned by Stewart Title Guaranty Company, the primary underwriter for Stewart Information Services Corporation (Stewart). The Stewart group of companies traces its origins back to 1893 in Texas, USA and has since maintained strong steady growth.**

The Corporation now boasts more than 9,500 issuing offices in more than 40 countries worldwide. In 2006, we generated revenue in excess of \$2.4 billion USD.

In recognition of our reliable performance, Stewart has been included in recent lists of FORTUNE 1000; FORTUNE magazine's top 100 "fastest growing companies"; and FORTUNE magazine's "most admired companies".

These outstanding characteristics of our company are also recognised by leading companies that measure financial performance. We are consistently honoured with high ratings, based primarily on the fact that Stewart is the only title insurer to have 31 years of consecutive growth in reserves and policyholder surplus.

### Financial Ratings Given to Stewart Title

Rating Company	Rating	Definition
Demotech, Inc.	A"	Unsurpassed financial stability related to maintaining positive surplus
Fitch Ratings	A+	Possessing exceptionally strong capacity to meet policyholder and contract obligation
LACE Financial	A	An exceptional financial condition and the highest level of financial soundness

We take great pride in our financial strength and backing. It enables us to provide you with peace of mind and security in doing business with us.



## APPOINTMENTS

We are pleased to announce that Stewart Title has opened a Western Australian office and Brooke Paull has been appointed Business Development Manager.

Brooke has worked in the legal and conveyancing industry in Western Australia for the past 10 years and has been employed by some of Perth's most respected firms as a conveyancer and also, as a paralegal.

Brooke holds a Legal Studies Diploma and recently finished her Certificate IV in Financial Services. She brings a wealth of knowledge, experience and understanding of the WA conveyancing and finance industries.

Brooke has been invited to take part in the education and training within the AICWA. She is looking forward to the challenge her new role will bring.

# CLAIMS NEWS

## Testimonials

Stewart Title prides itself on resolving title insurance claims in a professional manner. Our claims handling experience ensures that we deal with each claim in a timely manner by employing a practical and result-oriented approach. We are pleased to share a few recent testimonials:

*"...thanks again for all your help. We were so thrilled with the product and service we received we've been spreading the word about Stewart Title insurance far and wide amongst our friends, work colleagues and peers!"*

- Rachel Telford, Insured

*"Thank you to Stewart Title for solving the problems associated with the illegal construction of my garage. I was very impressed with your friendly and professional service. I have recommended your company to all my friends".*

- David Devlin, Insured

*"Thank you for your fast and friendly service in relation to our client's claim for outstanding Council rates which arose as a result of an incorrect verbal update from Council prior to settlement. We were particularly impressed that the matter was resolved within one week of the claim being made...keep up the good work!"*

- Glenmore Conveyancing

Stewart Title has been issuing title insurance policies globally for more than a century and our financial strength, stability and claims paying ability make us a global industry leader.

### Notifying Stewart Title of a Claim

When an insured becomes aware of a potential claim, it is imperative that Stewart Title be notified **immediately** in order for Stewart Title to take appropriate action. Long delays in notifying Stewart Title of a problem may jeopardise Stewart Title's ability to effectively deal with the claim.

Where an insured fails or refuses to notify Stewart Title of a claim in a timely manner and it affects Stewart Title's ability to properly defend the claim, then this may result in Stewart Title's obligations to the insured being reduced or cancelled.

To make a claim or enquire about a claim related issue, please contact our Claims Department on 1800 300 440 or by fax on 1300 881 432.



# CONVEYANCING TIPS

## From: “1001 Conveyancing Answers a Practical Guide to Conveyancing (NSW)”

Extracts from chapter on “Rescission”

### Rescission

Rescission may be either:

- statutory rescission, based on a breach of a statutory obligation, such as the statutory disclosure obligation or breach of a statutory warranty; or
- contractual rescission, based on the SFC.

Contractual rescission in the context of the SFC is based on non-fulfilment of a contractual expectation. Whilst termination is based on the breach by one party of a contractual obligation and therefore implies fault on the part of the breaching party, rescission is simply an acknowledgement that an event that the parties had anticipated would happen did not in fact occur. Fault by either party is irrelevant and neither party is penalised.

The parties are entitled to be returned to the position they were in prior to the contract and the contract is treated as if it was never created (*void ab initio*), except for the saving in SFC 19.2.3 that preserves rights to damages for a breach of contract.

The vendor may rescind:

- purchaser makes a claim that exceeds 5% of the price (SFC 7.1); or
- purchaser makes a requisition that the vendor is unwilling to satisfy (SFC 8); or
- a required consent is not obtained (SFC 27); or

- failure to register a plan (SFC 28); or
- failure to satisfy an Additional Provision (SFC 29).

The purchaser may rescind:

- special strata title expenses exceed 1% of the price (SFC 23.9); or
- a required consent is not obtained (SFC 27); or
- failure to register a plan (SFC 28); or
- failure to satisfy an Additional Provision (SFC 29).

### Mutual Obligations

The obligations of the vendor and purchaser are concurrent and mutual. The vendor is obliged to make title and the purchaser is obliged to pay the balance of purchase money, as part of a simultaneous transaction. Both parties must be ready, willing and able to complete their respective obligations on the day fixed for settlement.

*Palmer v. Lark* [1945] Ch 182  
*Neeta (Epping) P/L v. Phillips* (1974) 131 CLR 286  
*Fekala P/L v. Castle Constructions P/L* [2002] NSWCA 297

### Making Time of the Essence Again

A party that services a Notice to Complete but then fails to terminate within a reasonable time may be required to make time of the essence once again before being entitled to terminate.

*Green v. Somerville* (1979) 27 ALR 351  
*Mt Pleasant Estate Co Ltd v Withell* [1996] 3 NZLR 324

It is suggested that a delay of more than 14 days after being

entitled to terminate may trigger this requirement and that at least 7, and preferably 14, days notice to be given in the second notice.

### Time for Performance

Time for performance potentially arises twice. The first time is the settlement date as fixed by the contract. However, if settlement does not take place, the second focus is the last day fixed by a Notice to Complete. Failure to comply with the contract is not instantly fatal, but failure to comply with a Notice to Complete may be.

*Paclyn P/L v Harris Real Estate P/L* (1987) 4 BPR 9267  
*SA Mearns v Parris Holdings P/L* (1994) NSW ConvR 55-705; 6 BPR 13,677

### Extension of time for performance

There seems to be no objection in principle to the parties negotiating an extension of time for performance pursuant to a Notice to Complete. Such an extension may, in some circumstances, constitute a waiver of the notice and a fresh notice would be necessary.

A party cannot unilaterally extend a Notice to Complete.

*Fekala P/L v Castle Constructions P/L* [2002] NSWCA 297

Conveyancing Tips has been extracted with the kind permission of the authors - Russell Cocks, Paul Gibney and Tony Cahill. To order a complete copy of “1001 Conveyancing Answers” please write to PO Box 594, Lavington NSW 2641

## LENDER NEWS

### Mortgage Fraud: Are You Protected?

There has been much publicity in the media recently about the rise of identity fraud and the use of counterfeit certificates of title in mortgage transactions in New South Wales.

The New South Wales Law Society has issued alerts to members concerning counterfeit and fraudulently obtained Certificates of Title in response to a number of fraud schemes uncovered in New South Wales.

What can lenders do to protect themselves against fraudsters and manage the potential costs of the rise in mortgage fraud?

One option now available to lenders is title insurance. Stewart Title offers title insurance policies for both residential and commercial loans.

### Duty to Defend the Lender's Title

One of the key benefits of title insurance is the duty to defend the lender's title when there is a challenge to the enforceability or validity of a mortgage by a borrower. In the event of such a claim, Stewart Title will cover the costs incurred in defending the title, such as legal costs and expenses. These costs are in addition to any liability the insurer may have in respect of the indemnity amount contained in the policy. The policy amount will normally be the principal amount of the mortgage which will automatically increase to a maximum of 125% of the loan amount.

Enhance your risk management program today! For more information please contact Joseph D'Addona, Business Development Manager on **(02) 9081 6205**.

### Title Insurance as a Risk Management Tool

Title insurance minimises risk in the lending transaction by delivering protection against losses incurred by mortgage fraud. It is this re-allocation of risk that makes title insurance such an effective risk management tool. Title insurance protects the lender in two ways:

Firstly, title insurance protects the *validity* and *enforceability* of a mortgage which might be challenged in circumstances where the borrower's identity has been stolen by a fraudster. A common scenario is that a third party obtains false identification in the name of the true owner of the property and obtains funds from the lender by way of a mortgage. The fraudster obviously does not meet the repayments under the loan and the loan falls into default. The true owner disputes the validity of the mortgage.

Secondly, title insurance protects the *validity* and *enforceability* of a mortgage which might be challenged in circumstances where a mortgage broker or loan originator has committed fraud and the borrower claims the mortgage contract to be 'unjust'. The borrower commences action under the *Contracts Review Act* or the *Uniform Consumer Credit Code* to have the mortgage varied or set aside entirely. In most cases, the borrower will join the lender to the proceedings, requiring the lender to incur substantial legal fees.





## UNDERWRITING NEWS

### Title Insurance Coverage for Septic Systems and Other On-Site Wastewater Treatment Systems

There are a growing number of on-site wastewater treatment systems in use on properties throughout Australia. The use of on-site wastewater management systems such as septic tanks and aerobic wastewater treatment systems can often cause problems for solicitors/conveyancers and their purchaser clients in circumstances where the wastewater system is being operated without approval from Council.

In New South Wales for example, Councils have the power under the *Local Government Act 1993* to order the demolition or upgrading of an unapproved septic system or a septic system which is not being operated in accordance with that approval.

Where there is no building certificate you cannot be sure whether the septic system erected on the land has been constructed and completed in accordance with Council approval, or will require future rectification to comply with relevant development standards and consents.

#### Cover under the Residential Purchaser Policy

The Stewart Title Residential Purchaser Policy provides an indemnity in respect of “actual loss” in circumstances where Council issues an order for the removal or rectification of an onsite wastewater management system (“septic system”) located on the insured property as a result of the following:

- (i) The septic system was installed *without* Council approval;
- (ii) The septic system was installed *with* Council approval however the system was built or modified contrary to that approval and does not comply with the requirements of Council.

Where an insured is notified by Council that the septic system was constructed by a previous owner without obtaining the required approvals, then Stewart Title will pay for the insured’s loss associated with complying with the Council notice.

#### Disclosure of known defects relating to a Septic System

Conveyancers and solicitors must disclose any issues relating to the functionality or possible non compliance of the septic system to Stewart Title at the time of ordering the Policy. We would prefer that you also enclose with your title insurance order a copy of the relevant section of the Building Report and, if applicable, any Special Conditions which disclose any issues relating to the septic system.

Please note that a failure to disclose a known defect may affect the outcome of your client(s) claim.

Should you have any queries in relation to our coverage please contact Stewart Title’s Underwriting Department on **1800 300 440**.